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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEVEN LOUIS EATON, WILLIAM EDWARD SHANNON II,  
KAREN LINDA KARAM, and DAVID OWEN DEREES

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Appeal 2009-005792  
Application 10/698,648  
Technology Center 3600

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Decided: February 19, 2010

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Before MURRIEL E. CRAWFORD, JOESEPH A. FISCHETTI, and  
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 of the final rejections of claims 1-6, 8-26, 28-46, and 48-60. We have jurisdiction under 35 U.S.C. § 6(b).

#### SUMMARY OF THE DECISION

We AFFIRM.<sup>1</sup>

#### THE INVENTION

Appellants' claimed invention relates to a method, system, and computer readable medium for automating phases of real estate transfers. The process creates a real estate record on a server, assigns a record identifier to that record, and then receives information through a fax source. The information received is then associated to the real estate record using the assigned record identifier and then stored on the server. (Spec. p. 2, ¶ [0009]).

Independent claim 1, which is deemed to be representative, reads as follows:

1. A method for automating phases of real estate transfers, said method being centralized on at least one server and carried out over a distributed computer network to a plurality of client computers, said method comprising the steps of:

creating a real estate record on said at least one server;

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<sup>1</sup> Our decision will make reference to the Appellants' Appeal Brief ("Br." filed Mar. 19, 2008) and the Examiner's Answer ("Ans.," mailed May 21, 2008).

assigning a record identifier to the real estate record;

receiving information from any fax source capable of contacting said at least one server irrespective of a fax number of said fax source;

prompting a sender of said information to input said record identifier into said fax source;

associating said information to said real estate record using the record identifier; and

storing said information on said at least one server in association with said real estate record.

## THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Raveis, Jr.	US 2002/0049624 A1	Apr. 25, 2002
Watanabe <sup>23</sup>	JP 2001-274946	Oct. 5, 2001

The Examiner rejected claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention proper as a matter law. Additionally, the Examiner rejected claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, second paragraph, as being vague and indefinite proper as a matter of law. Lastly,

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<sup>2</sup> Japanese Patent Document Number 2001-274946, published Oct. 5, 2001. This decision cites to the English translation submitted Dec. 30, 2005 (hereinafter “Watanabe”).

<sup>3</sup> The Examiner refers to Watanabe in the evidence relied upon section of the Examiner’s Answer as JP20021274946 A. (Ans. 3). We believe this to be a typographical error and instead find that the reference should properly be referred to as JP 2001-274946.

the Examiner rejected claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 103(a) as being unpatentable over Raveis, Jr. and Watanabe.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).a

## ISSUES

1. Have Appellants shown the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention proper as a matter law?
2. Have Appellants shown the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, second paragraph, as being vague and indefinite proper as a matter of law?
3. Have Appellants shown the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 103(a) as being unpatentable over Raveis, Jr. and Watanabe?

## FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir.

1985) (explaining the general evidentiary standard for proceedings before the Office).

*Claim Interpretation*

1. In describing a “record identifier,” Appellants’ Specification discloses that “[e]ach property listing is assigned a unique record identifier or identification number.” (p. 31).
2. With regard to “prompting a sender to input said record locator into said fax source,” Appellants’ Specification discloses:

After dialing the central fax number, but prior to sending the fax, the person 70 is voice prompted to enter a mailbox number (aka the Document Routing Number which was discussed previously above) by a procedure or fax manager software 78 that is loaded to one or more of the servers of the system of the present invention. This identifying DRN is the same number that uniquely identifies the property listing within the databases 36 of the system. The person 70 then enters the DRN number, such as by keypad entry that generates tones such as with a touch-tone dialing system. Then the person 70 sends the fax as consistent with current knowledge in the art of fax transmission.

(Spec. p. 48).

3. Appellants’ Specification describes that each property listing is assigned a unique record identifier or identification number and a listing must exist prior to adding information to the listing. (Spec. p. 31).
4. Appellants’ Specification discloses that “. . . usage is tracked using an audit trail function.” (Spec. p. 4).

*Raveis, Jr.*

5. Raveis, Jr. is directed to a method and system for generating a customer record for the different stages involved in a real estate transaction. (Abs.).

6. Raveis, Jr. describes that its system includes a server which communicates with a distributed computer network which is capable of hosting multiple databases. (¶ [0056]).

7. Raveis, Jr. describes that the customer record stores data fields relating to the tasks associated with the purchase or sale of a property from contract to close. (¶¶ [0017], [0018]).

8. Raveis, Jr. describes that its databases are used in a relational arrangement. (¶ [0057]).

9. Raveis, Jr. describes submitting the property listing to a multiple listing service. (¶ [0099]).

10. Raveis, Jr. discloses that “‘agent’, ‘real estate agent’, ‘sales agent’ and ‘real estate broker’ are used interchangeably throughout the subject disclosure.” (¶ [0073]).

11. Raveis, Jr. describes that the automated system can provide notifications over email to customers, move consultants, sales agents, and transaction coordinator. (¶¶ [0034], [0035]).

12. Raveis, Jr. describes that its real estate management software program generates and delivers a list of available products and services to customers based on the geographic location of a property. (¶ [0037]).

13. Raveis, Jr. describes creating an accessible history or “activity file” that documents and records all the member’s real estate transactions.

(¶ [0120]).

*Watanabe*

14. Watanabe is directed to an electronic filing system which is designed to transmit, via FAX, documents to a document storage area. (¶ [0009]).

15. Watanabe describes that a special cover sheet includes a receiver ID for identifying the appropriate document storage area. (¶ [0009]).

16. Watanabe describes coding a document into a TIFF format. (¶ [0014]).

17. Watanabe discloses “. . . a document storage mechanism designed to specify, based on the receiver ID information, the document storage area for the corresponding receiver and to store the corresponding communications document into said document storage area.” (¶ [0009]).

## PRINCIPLES OF LAW

*Enablement*

An analysis of whether the claims under appeal are supported by an enabling disclosure requires a determination of whether that disclosure contained sufficient information regarding the subject matter of the appealed claims as to enable one skilled in the pertinent art to make and use the claimed invention. The test for enablement is whether one skilled in the art could make and use the claimed invention from the disclosure coupled with information known in the art without undue experimentation. *See United States v. Teletronics, Inc.*, 857 F.2d 778, 785 (Fed. Cir. 1988); *In re*

*Stephens*, 529 F.2d 1343, 1345 (CCPA 1976). Some enablement experimentation, even a considerable amount, is not “undue” if, e.g., it is merely routine, or if the specification provides a reasonable amount of guidance as to the direction in which the experimentation should proceed. *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988). The “undue experimentation” component examines (1) the quantity of experimentation; (2) the amount of direction or guidance present; (3) the presence or absence of working examples; (4) the nature of the invention; (5) the state of the prior art; (6) the relative skill of those in the art; (7) the predictability or unpredictability of the art; and (8) the breadth of the claims (hereinafter, “the Wands factors.”). *Id.* at 737. The Examiner’s analysis of the “undue experimentation” component must consider all the evidence related to each of the Wands factors, and any conclusion of non-enablement must be based on the evidence as a whole. *Id.* at 737, 740; *see also Manual of Patent Examining Procedure* (MPEP) § 2164.01(a).

### *Definiteness*

The test for compliance is whether the claims “set out and circumscribe a particular area with a reasonable degree of precision and particularity” when read in light of the “application disclosure as they would be interpreted by one of ordinary skill in the [...] art.” *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971).

*Obviousness*

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

In *KSR*, the Supreme Court held that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The Court explained:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

*Id.* at 417.

The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. *Oetiker*, 977 F.2d at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *see also In re Piasecki*, 745 F.2d at 1472.

## ANALYSIS

### ISSUE 1

*Claims 1-6, 8-26, 28-46, and 48-60 rejected under 35 U.S.C. § 112, first paragraph, as not enabled.*

The Examiner rejected claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention proper as a matter law. (Ans. 4).

The Examiner held that it is not clear how a “[t]hermal [f]ax [m]achine which is capable of contacting at least one server . . . is sent a prompt for the sender to input said record identifier because the telephone line is busy with the communication between the thermal fax machine and

the server.” (Ans. 4). Additionally, the Examiner held that it is not clear how “. . . the sender know[s] the record identifier associated with the real estate record.” (Ans. 4). Lastly, with regard to dependent claims 3, 23, and 43, the Examiner held that it is not clear how “. . . a portion of [the] fax is sent to MLS when there is not conversion like for example OCR is done on the received fax to extract the data which is [sic] sent to MLS.” (Ans. 4).

The Examiner concluded that undue experimentation would be involved in prompting the sender to input said record identifier into said fax source, the sender knowing the record identifier associated with the real estate record, and sending a portion a property listing to a MLS. (Ans. 3-4). However, the Examiner has not discussed the Wands factors with regard to any of limitations identified, *supra*. For example, the Examiner has not discussed the level of skill in the art and the direction provided in the Specification to perform these steps, and thus has failed to establish a *prima facie* case of nonenablement.

With regard to prompting the sender to input said record identifier into a fax source, as generally recited in claims 1, 21, and 41, we note that the Specification describes that after dialing the fax number, but prior to sending the fax, the person is voice prompted to enter a mailbox number which corresponds to the record identifier as claimed by Appellants. (FF 2). Following the prompt, the Specification goes on to describe that the person sends the fax consistent with current knowledge in the art of fax transmission. (FF 2). As such, we find that the Appellants have explained with sufficient guidance and direction how the sender would be prompted to input said record identifier into a fax source without undue experimentation.

With regard to the sender knowing the record identifier associated with the real estate record, as generally recited in claims 1, 21, and 41, we note that prior to the step of prompting a user to input a record identifier into the fax source, a real estate record is created and a record identifier is then assigned to the real estate record. (Br. 51, 54, 57). Further, Appellants' Specification describes that each property listing is assigned a unique record identifier and a listing must exist prior to adding information to the listing. (FF 3). Thus, we find that Appellants have explained with sufficient guidance and direction how a sender would know the record identifier associated with the real estate record without undue experimentation.

Lastly, with regard to sending a portion a property listing to a MLS, as generally recited in claims 3, 23, and 43, we find that contrary to the Examiner's argument that "... [A]ppellant[s] ha[ve] not disclosed how a portion of fax is sent to MLS when there is not conversion like for example OCR is done on the received fax to extract the data which is [sic] sent to MLS" (Ans. 4), Appellants' do not claim transmitting at least a portion of a fax here. Rather, Appellants claim "transmitting at least a portion of said real estate record to a multiple listing service," which would not necessarily require any conversion at all since the real estate record is already on the server. (Br. 51, 54, 57). Thus, we find that Appellants have explained with sufficient guidance and direction the step of sending a portion a property listing to a MLS without undue experimentation.

Therefore, we will not sustain the Examiner's rejection of claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement.

ISSUE 2

*Claims 1-6, 8-26, 28-46, and 48-60 rejected under 35 U.S.C. § 112, second paragraph, as being vague and indefinite.*

The Examiner argues that claims 1-6, 8-26, 28-46, and 48-60 are vague and indefinite because, “[A]ppellant[s] ha[ve] not positively claimed how a sender of a fax to the server knows the identifier associated with the real estate record to be able to respond to the prompt by the server,” “the association of the information received is associated with the proper real estate,” and “[A]ppellant[s] ha[ve] not positively claimed how the system approves the information received.” (Ans. 4). Further, the Examiner argues that claims 1-6, 8-26, 28-46, and 48-60 are vague and indefinite because, “[A]ppellant[s] ha[ve] not positively claimed how the claimed invention automatically makes a decision on what access rights should assigned to the received information.” (Ans. 4). We cannot agree.

We find that the Examiner’s concerns go to the construction to be given the claims rather than indefiniteness. As discussed *supra*, with regard to the sender of a fax knowing the identifier associated with the real estate record, the claims may encompass the “prompting” step (see claim 1) since the method step has properly set forth steps which create a real estate record and then subsequently assign a record identifier to that real estate record, prior to prompting a sender to input a record identifier. Thus, the Examiner’s concerns are a matter of claim breadth, not indefiniteness. “Breadth is not indefiniteness.” *In re Gardner*, 427 F.2d 786, 788 (1970).

Similarly, the association of the information received, how the system approves the information received, and how the claimed invention automatically makes a decision on what access rights should be assigned to the received information are a question of claim interpretation and not necessarily indefiniteness. *Cf. Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989) (“Ambiguity, undue breadth, vagueness, and triviality are matters which go to claim validity for failure to comply with 35 USC 112 ¶2, not to interpretation or construction.”) In that regard, it appears that no attempt has been made to give the claims the broadest reasonable construction consistent with the specification as it would be interpreted by one of ordinary skill in the art. Unless that is first done, a *prima facie* case of indefiniteness can not be said to have been established. *Cf. In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971) (“[T]he definiteness of the language employed must be analyzed-- not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art”).

Accordingly, we will not sustain the Examiner’s rejection of claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, second paragraph as vague and indefinite.

ISSUE 3

*Claims 1-6, 8-26, 28-46, and 48-60 rejected under 35 U.S.C. § 103(a) as being obvious over Raveis and Watanabe<sup>4</sup>.*

Appellants generally argue, “. . . there is no teaching or suggestion in Raveis, Jr. or Watanabe that their teachings may be combined so as to provide the present invention as recited in the claims and such motivation only comes from Appellants’ disclosure.” (Br. 34). To the extent Appellants seek an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court’s holding in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). The Examiner has provided an articulated reasoning with rational underpinning for why a person with ordinary skill in the art would modify the real estate transaction system of Raveis, Jr. to incorporate the electronic facsimile-based filing system of Watanabe (FF 14). Specifically, the Examiner articulates a rationale based on a party being able to electronically file documents in a transaction. (Ans. 5). Thus, a person with ordinary skill in the art would know from Watanabe to apply this faxing technique to Raveis, Jr. since both system are able to transmit information to a server over a communications network. (FF 6, 14). Therefore, Appellants’ arguments with regard to the combination of Raveis, Jr. and Watanabe are not persuasive as to error in the rejection.

*Independent claims 1, 21, and 41*

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<sup>4</sup> A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37(c)(vii).

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to disclose, teach, or suggest “. . . record identifiers, assigning a record identifier to a real estate record, prompting a sender of information to input the record identifier into a fax source, and associating the real estate record to the received information using the record identifier.” (Br. 36). We are not persuaded by Appellants’ arguments and will address each limitation individually, *infra*.

With regard to a record identifier, the Examiner cited to Raveis, Jr. to teach this limitation, and we agree. Raveis, Jr. discloses generating a customer record which comprises data fields relating to the tasks associated with the purchase or sale of a property. (FF 5, 7). This customer record would necessarily be identifiable and searchable based on the data fields given the relational arrangement of the database disclosed in Raveis, Jr. (FF 5, 8). Thus, we find any field in the customer record to be equivalent to the record identifier as claimed by Appellants.

With regard to assigning a record identifier to a real estate record, the Examiner cited to the combination of Raveis, Jr. and Watanabe to address this limitation, and we agree. As discussed *supra*, we find that Raveis, Jr. teaches a record identifier which may be any field in the customer’s real estate record. Further, Appellants’ Specification describes that each property listing is assigned a unique record identifier or identification number. (FF 1). Thus, Appellants’ independent claims 1, 21, and 41 do not require each real estate record to be assigned an identification number, but merely a unique record identifier which we interpret to be a field in the customer’s record, such as an address, which is unique. (FF 7, 8). Thus, we

find the combination of Raveis, Jr. and Watanabe makes obvious the step of assigning a record identifier to a real estate record, as generally recited by Appellants in claims 1, 21, and 41.

With regard to prompting a sender of information to input the record identifier into a fax source, the Examiner cited to the combination of Raveis, Jr. and Watanabe to address this limitation, and we agree. Specifically, the Examiner cited to Watanabe which teaches the ability to fax a document into a server, and through the use of a receiver ID, the document is directed to the appropriate storage location. (FF 14, 15). We interpret this receiver ID to be equivalent to Appellants' record identifier since both the receiver ID and the record identifier are used to associate the faxed document with the appropriate record or storage location. Additionally, with regard to the prompting step, we find that a user is always prompted to initiate a fax transmission. Thus, when transmitting a fax, a user using the system taught by Watanabe would contemporaneously be transmitting the information and the record identifier. Notwithstanding, we note that with regard to Appellants' step of "receiving information from any fax source," performed prior to the "prompting step," we interpret this step to be performed by a user entering the phone number into the fax machine. Accordingly, we find the combination of Raveis, Jr. and Watanabe makes obvious the step of a sender of information to input the record identifier into a fax source, as generally recited by Appellants in claims 1, 21, and 41.

With regard to associating the real estate record to the received information using the record identifier, the Examiner cited to the combination of Raveis, Jr. and Watanabe to address this limitation, and we

agree. As discussed *supra*, we interpret the receiver ID taught by Watanabe to be equivalent to Appellants' record identifier since both the receiver ID and the record identifier are used to associate the faxed document with the appropriate record or storage location. (FF 14, 15). Additionally, we find that this receiver ID could be assigned as any field in the customer record disclosed in Raveis, Jr. in order to uniquely identify it. (FF 7, 8). Thus, commensurate with the scope of Appellants' independent claims 1, 21, and 41, the receiver ID taught by Watanabe would associate and store the information faxed by a user to the appropriate customer real estate record disclosed in Raveis, Jr. Therefore, we find the combination of Raveis, Jr. and Watanabe makes obvious the step of associating the real estate record to the received information using the record identifier, as generally recited by Appellants in claims 1, 21, and 41.

Accordingly, Appellants' arguments that the combination of Raveis, Jr. and Watanabe fails to disclose, teach, or suggest "... record identifiers, assigning a record identifier to a real estate record, prompting a sender of information to input the record identifier into a fax source, and associating the real estate record to the received information using the record identifier" are not persuasive as to error in the rejection.

*Dependent claims 3, 23, and 43*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest the step of "transmitting at least a portion of said real estate record to a multiple listing service," as recited in claims 3, 23 and 43. Further, Appellants argue their system uses an identifier to accomplish

this element and “. . . Raveis, Jr. is completely silent as to the definition of a property listing as well as to the meaning of a customer record.” (Br. 41). We are not persuaded by Appellants’ argument and agree with the Examiner’s finding that Raveis, Jr. discloses submitting the property listing to a multiple listing service. (FF 9). The rejection of claims 3, 23, and 43 is in view of Raveis, Jr. and Watanabe, as discussed *supra*, the Examiner cited to the receiver ID taught by Watanabe which associates and stores the information transmitted by a user to the appropriate customer real estate record disclosed in Raveis, Jr. Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and Watanabe makes obvious the step of “transmitting at least a portion of said real estate record to a multiple listing service.” Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 4, 24, and 44*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest the step of “converting said information into a digital document to be associated and stored in accord with said associating and storing steps.” (Br. 42). We are not persuaded by Appellants’ argument and find that Watanabe teaches coding a document into a TIFF format. (FF 16). Thus, Watanabe converts a faxed document into a digital document and then associates and stores, as discussed *supra*. Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 5, 25, and 45*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest the step of “determining whether said record identifier matches any of a number of a plurality of real estate records,” as recited in claims 5, 25, and 45. Specifically, Appellants argue, “Watanabe teaches a ‘receiver 10’ but completely fails to identify ‘receivers’ nor does Watanabe define a receiver ID in any way, shape or form within the complete prior art reference.” (Br. 42-43). We are not persuaded by Appellants’ argument and find that the receiver ID taught by Watanabe could be assigned as any field in the customer record disclosed in Raveis, Jr. in order to uniquely identify it. (FF 7, 8). Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and Watanabe makes obvious the step of “determining whether said record identifier matches any of a number of a plurality of real estate records.” Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 6, 26, and 46*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest the “. . . storing step comprises saving said digital document on said at least one server in accord with a matching real estate record if said determining step is positive,” as recited in claims 6, 26, and 46. (Br. 43). We are not persuaded by Appellants’ argument and find that the receiver ID taught by Watanabe could be assigned as any field in the customer record disclosed in Raveis, Jr. in order to uniquely identify it. (FF 7, 8). Additionally, the system taught by Watanabe stores a digital copy of the document faxed in a document storage area based on the receiver ID

information. (FF 17). Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and Watanabe makes obvious the “. . . storing step comprises saving said digital document on said at least one server in accord with a matching real estate record if said determining step is positive.” Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 10, 30, and 50*

With regard to claims 10, 30, and 50, Appellants argue that the Examiner has improperly “. . . equat[ed] the ‘customer record’ to the ‘identifier’ taught by Appellants’ invention.” (Br. 44-45). We are not persuaded by Appellants’ argument and find that the receiver ID taught by Watanabe could be assigned as any field in the customer record disclosed in Raveis, Jr. in order to uniquely identify it. (FF 7, 8). Thus, for these reasons and the reasons discussed *supra*, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 12, 32, and 52*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest the step of “. . . tracking activity on said at least one server so as to provide an audit trail of said activity corresponding to said real estate record such as date of access, user identification, and the like,” as recited in claims 12, 32, and 52. Specifically, Appellants argue that, “. . . the words ‘audit trail’ are not found in the entire disclosure of Raveis, Jr.” (Br. 45-46). We are not persuaded by Appellants’ argument and while we agree

that Raveis, Jr. may not disclose the words “audit trail” per se, Raveis, Jr. does indeed disclose a history or “activity file” that documents and records all the member’s real estate transactions. (FF 13). Thus, similar to an audit trail which Appellants’ Specification describes as a usage tracker (FF 4), the combination of Raveis, Jr. and Watanabe makes obvious the step of “. . . tracking activity on said at least one server so as to provide an audit trail of said activity corresponding to said real estate record such as date of access, user identification, and the like.” Thus, for these reasons and the reasons discussed *supra*, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 13, 33, and 53*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest that the “. . . method is administered by a real estate broker,” as recited in claims 13, 33, and 53. Specifically, Appellants argue that “[s]ince Raveis, Jr. discloses in ¶ 0073 that ‘agent’, ‘real estate agent’, ‘sales agent’ and ‘real estate broker’ are used interchangeably throughout, it is not clear whether [Raveis, Jr.] teaches that the system is capable for administration by a real estate broker. . .” (Br. 46). We are not persuaded by Appellants’ argument and find that although Raveis, Jr. may use the above terms interchangeably, Raveis, Jr. indeed suggests a “real estate broker.” While Appellants’ claims may recite that the method is administered by a real estate broker, it does not recite that it may not be performed by others nor have Appellants argued that the system is not being administered by one of these users which Raveis, Jr. uses interchangeably. (FF 10). Thus, for these reasons and the reasons discussed *supra*, we find

the combination of Raveis, Jr. and Watanabe makes obvious the step that the “. . . method is administered by a real estate broker.” Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 14, 34, and 54*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest that the “. . . the step of said real estate broker controlling at least a portion of said information, said at least a portion of information including a list of third party companies with whom said real estate record is associated, such that a listing agent must use only third party companies from said list to conduct said real estate transfer,” as recited in claims 14, 34, and 54. (Br. 46). We are not persuaded by Appellants’ argument and find as discussed *supra*, Raveis, Jr. teaches a “real estate broker.” Appellants make no arguments regarding claims 14, 34, and 54 other than those asserted regarding claims 13, 33, and 53. Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and Watanabe makes obvious the limitation recited in claims 14, 34, 54. Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 18, 38, and 58*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest “. . . the step of automatically generating email communications to one or more of a plurality of users based on the happening of an event.,” as recited in claims 18, 38, and 58. Specifically, Appellants argue, “Raveis, Jr. in ¶ 0034 teaches an automated system of

notification to the customer, move consultant, sales agent, and transaction coordinator. [However,] [s]uch notification is extremely limited.” (Br. 48). We are not persuaded by Appellants’ argument and find that the email notification provided by the automated system in Raveis, Jr. discloses the limitation as claimed by Appellants. (FF 11). While Appellants’ may argue the email notifications disclosed by Raveis, Jr. are “extremely limited,” Appellants claims, as recited, require nothing more. Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and Watanabe makes obvious the limitation recited in claims 18, 38, and 58. Therefore, Appellants’ argument is not persuasive as to error in the rejection.

*Dependent claims 19, 39, and 59*

Appellants argue that the combination of Raveis, Jr. and Watanabe fails to teach or suggest that the “. . . the step of automatically generating an email communication containing advertising information from said real estate record,” as recited in claims 19, 39, and 59. (Br. 48-49). We are not persuaded by Appellants’ argument and find that as discussed *supra*, Raveis, Jr. discloses communication by email. (FF 11). Additionally, Raveis, Jr. discloses generating and delivering lists of available products and services to customers based on the geographic location of a property (FF 12), which we interpret to be advertisements. Although, Raveis, Jr. may not explicitly disclose that these lists are delivered via email, given the fact that the system of Raveis, Jr. communicates with customers via email, it would have been obvious to deliver these advertisements by email. Thus, for these reasons and the reasons discussed *supra*, we find the combination of Raveis, Jr. and

Watanabe makes obvious the limitation recited in claims 18, 38, and 58. Therefore, Appellants' argument is not persuasive as to error in the rejection.

*Dependent claims 2, 8, 9, 11, 15-17, 20, 22, 28, 29, 31, 35-37, 40, 42, 48, 49, 51, 55-57, and 60*

Appellants do not separately argue claims 2, 8, 9, 11, 15-17, 20, 22, 28, 29, 31, 35-37, 40, 42, 48, 49, 51, 55-57, and 60 which depend from claims 1, 21, and 41 respectively, and so have not sustained their burden of showing that the Examiner erred in rejecting claims 2, 8, 9, 11, 15-17, 20, 22, 28, 29, 31, 35-37, 40, 42, 48, 49, 51, 55-57, and 60 under 35 U.S.C. § 103(a) as being unpatentable over Raveis, Jr. and Watanabe for the same reasons we found as to claims 1, 21, and 41, *supra*.

## CONCLUSIONS OF LAW

1. We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention proper as a matter law.
2. We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 112, second paragraph, as being vague and indefinite proper as a matter of law.
3. We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 103(a) as being unpatentable over Raveis, Jr. and Watanabe.

## DECISION

The decision of the Examiner to reject claims 1-6, 8-26, 28-46, and 48-60 under 35 U.S.C. § 103(a) as being unpatentable over Raveis, Jr. and Watanabe is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

Appeal 2009-005792  
Application 10/698,648

ack

cc:

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